

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO
JUDGE EDWARD W. NOTTINGHAM
COURTROOM 14, TENTH FLOOR, ALFRED A. ARRAJ UNITED STATES COURTHOUSE
CHAMBERS A1041, TENTH FLOOR, ALFRED A. ARRAJ UNITED STATES COURTHOUSE

**CIVIL & CRIMINAL CASES
INSTRUCTIONS CONCERNING
TRIAL PREPARATION CONFERENCE**

I will try to hold the Trial Preparation Conference sometime a week or so before trial is set to commence. There is no standard order or other document which needs to be submitted before this conference. In civil cases, the Final Pretrial Order should be reviewed by counsel, because it will guide the course of the trial. If amendments to the Final Pretrial Order are required "to prevent manifest injustice," those amendments can be considered at this conference. This is counsel's opportunity to invite the court's attention to any problems which need to be resolved before trial commences or which may arise during the course of the trial.

The materials listed below must be tendered to the courtroom deputy clerk for filing (and served on other parties) at the Trial Preparation Conference. **Do not file the materials directly with the clerk's office in room A105; bring them with you to the conference.** The things to be tendered are:

1. All *stipulations* as to any matters. In a jury trial, the court will read the stipulations to the jury as a part of the presentation of evidence
2. *Exhibit lists*. Use the attached form. A computerized version of the form (in WordPerfect version 9.0) can be obtained by delivering a 3½" diskette to my secretary or courtroom deputy clerk and asking for a copy of the form. The form is also posted on the court's web site, www.cod.uscourts.gov. Click first on the United States District Court button and then on the Judges' Information button to navigate to the form.

In civil cases the exhibit list must fully comply with Fed. R. Civ. P. 26(a)(3)(C). In all cases, it **must include a description of all summaries, charts, and demonstrative exhibits prepared by any witness in advance of the witness's appearance at trial.** All such exhibits shall be available for inspection by other counsel and parties at the Trial Preparation Conference or immediately thereafter. In civil cases, any objections required by Fed. R. Civ. P. 26(a)(3) shall be filed and served (by hand-delivery or facsimile) no later than five days after the Trial Preparation Conference.¹

3. **The judge's copies of all exhibits.** These are the copies I will use in ruling on motions, determining preliminary questions concerning admissibility, following the testimony at trial, and making any necessary findings. They are separate and distinct from the original, official exhibits which counsel will use in questioning witnesses at trial and which, if received in evidence, will go to the jury. **The judge's copies must on a CD-ROM prepared in accordance with the Technical Specifications for Submission of Judge's Copies of Trial Exhibits, a copy of which is attached to the written version of these trial preparation procedures and an electronic version of which is available on the court's web site.** For more details, please call my courtroom deputy clerk.

¹**NOTE TO COUNSEL AND PARTIES:** copies of all exhibits — other than summaries, charts, and demonstrative exhibits — should already have been provided to opposing counsel pursuant to the terms of my standard Final Pretrial Order.

4. **Final witness lists.** List separately:

(a.) witnesses whose testimony will be given live at trial.

(b.) witnesses whose testimony is to be presented by way of deposition, **together with a designation of the portions of the deposition to be used.**

Note:

In civil cases, if deposition testimony has not been recorded stenographically, Fed. R. Civ. P. 26(a)(3)(B) requires that a transcript of pertinent parts be furnished to other parties and filed with the court. The transcript should be provided to other parties at the trial preparation conference. **It should not be delivered to the court until trial.** See Fed. R. Civ. P. 32(c). Objections to use of a designated deposition (see Fed. R. Civ. P. 26[a][3]), as well as cross-designations of deposition testimony, shall be filed with the clerk and served (by hand delivery or facsimile) no later than five days after the trial preparation conference.

5. If trial is to a jury, ***voir dire questions, proposed instructions, verdict forms, and proposed special interrogatories.*** Please observe the following directions in preparing and tendering instructions:

(a.) **Written instructions will not be given to the jury, so the authority and/or source for an instruction should be noted on the original and all copies.** Please number the proposed instructions – e.g., “Plaintiff’s Instruction No. 1” – to facilitate reference to them during the instructions conference.

(b.) Counsel are ordered to confer before the trial preparation conference and to divide instructions and verdict forms into the following packets: (1) instructions and forms to which all parties have stipulated; (2) instructions and forms tendered by each party and objected to by another party. Within five days after the Trial Preparation Conference, each party must file and serve (by hand-delivery or facsimile) a statement briefly explaining the basis for any objections to instructions.

(c.) Assuming that all instructions are prepared on a word processor, the instructions should be placed into three separate documents or files on a 3½" IBM-compatible diskette. One file or document should consist of **all** stipulated instructions tendered pursuant to the previous subparagraph of these instructions. The second file or document should consist of **all** plaintiff’s tendered instructions which defendant finds objectionable. The third file or document should consist of **all** defendant’s tendered instructions which plaintiff finds objectionable. Separate additional files or documents should consist of objected-to instructions tendered by other parties to the case. Finally, each verdict form tendered must be in a separate document or file on the diskette.

6. Trial briefs or motions *in limine*, if any, which the parties wish to have the court review. Motions *in limine* are widely abused, rarely granted, and strongly discouraged. Trial briefs are encouraged but not required. A suitable trial brief is frequently helpful and constitutes a good outlet for an irresistible impulse to educate the court.

CASE CAPTION

v.

EX. NO./LTR.	DESCRIPTION	STIP?	REC	REJ	RUL. RES.	COMMENTS
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List First Plaintiff's Exhibits by Number (1, 2, etc . . . 1000), First Defendant's Exhibits by Letter A (A-1, A-2, etc., . . .A-1000), Second Defendant's Exhibits by Letter B (B-1, B-2, etc., . . .B-1000), etc. Other parties in a multi-party case (including additional plaintiffs) should simply use an additional letter to designate the party and differentiate that party from others)

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INSTRUCTION NOTE TO USERS OF THIS FORM: Everything above the bottom of the double-underlined boxes constitutes a header. To complete the information in the header, you will need to edit it, by clicking on it or otherwise getting access to it. After exiting the header, you can start completing the exhibit list, which is simply a table. Place the cursor in the far-left cell for the first exhibit. The TAB button moves horizontally along the row and, at the end of a row, inserts a new row for the next exhibit. The form was created in WordPerefect Version 9 and probably works best in that program and format.